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10 IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 KING MOUNTAIN TOBACCO CO.,
15 INC.,
16 Defendant.

Case No. CV-12-3089-RMP

**DECLARATION OF ALLEN
LEFTWICH**

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19 I, ALLEN LEFTWICH, declare as follows:

20 1. My name is Allen Leftwich. I am over 21 years old and I am competent
21 to testify about the matters set forth herein.

22 2. I am currently employed by the Alcohol and Tobacco Tax and Trade
23 Bureau (hereafter, "TTB") as the Director, Tax Audit Division (hereafter, "TAD").
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1 Immediately prior to my appointment as Director, I served as Deputy Director, TAD.
2 I have been employed by TTB since July 2003.
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4 3. As director of TAD, I am responsible for the planning, development and
5 monitoring of TTB's excise tax audit program for TTB's regulated industries. I have
6 a Deputy Director, six Supervisory Audit Managers, a Special Operations Program
7 Manager and more than 65 excise-tax auditors that report to me.
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9 4. I am generally familiar with the Federal excise tax payment
10 requirements for tobacco manufacturers in the United States. I am also familiar with
11 TTB's record-keeping system and have access to tobacco excise tax records as
12 needed to perform my official duties.
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14 5. In connection with my official duties as Deputy Director and, now,
15 Director, TAD, I reviewed the affidavit (hereafter, "Bullwinkel Affidavit") prepared
16 by Special Agent Matthew Bullwinkel, Federal Bureau of Investigations, in support
17 of the search and seizure warrant executed at the premises of King Mountain
18 Tobacco Company, Inc. (hereafter, "King Mountain") on February 16, 2011.
19 Attached to this declaration as Exhibit A is a true and correct copy of the Bullwinkel
20 Affidavit.
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24 6. King Mountain currently holds a permit as a manufacturer of tobacco
25 products. According to TTB's records, with which I am personally familiar, TTB
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1 approved King Mountain's application and issued the tobacco manufacturer's permit
2 in 2007.

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4 7. The Bullwinkel Affidavit describes a transaction between King
5 Mountain and FB Enterprises involving the sale of 22 tractor trailer loads of
6 cigarettes.

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8 8. Under my supervision, TTB's TAD compared those transactions to the
9 Federal Excise tax returns filed by King Mountain and found that King Mountain
10 had underpaid its Federal excise tax in May and June 2010 by nearly \$9 million.

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12 9. According to the Bullwinkel Affidavit, a South Carolina wholesaler
13 purchased 22 truckloads of King Mountain brand cigarettes each carrying 49,920
14 cartons between May 2010 and July 1, 2010. This totaled to 149,760 cartons
15 purchased in May 2010 and then 948,480 purchased in June 2010. Bullwinkel
16 Affidavit at 67-70. The number of cartons purchased in May and June 2010 was
17 equivalent to 29,952,000 and 189,696,000 cigarettes respectively (219,648,000
18 cigarettes total).

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21 10. TAD reviewed King Mountain's Federal Excise tax returns and monthly
22 reports for May and June 2010 to determine whether the sales to the South Carolina
23 wholesaler were reported and tax-paid. Attached as Exhibit B are true and correct
24 copies of King Mountain's Federal excise tax returns, TTB Form 5000.24, for May
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1 and June 2010. Attached as Exhibit C are true and correct copies of King Mountain's
 2 monthly reports, TTB Form 5210.5, for May and June 2010.

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 4 11. For May 2010, King Mountain reported removal of 18,061,000
 5 cigarettes. For June 2010, King Mountain reported removal of 22,861,200 cigarettes.
 6 These reported removal amounts are intended to represent aggregate monthly
 7 cigarette removals. Total removals reported by King Mountain for May and June
 8 2010 did not equal or exceed the sales to the South Carolina Wholesaler as would be
 9 expected. The following chart compares the reported removals with the sales to the
 10 South Carolina Wholesaler:
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	<u>May 2010</u> (cigarettes)	<u>June 2010</u> (cigarettes)	<u>Total</u>
King Mountain Report	18,061,000	22,861,200	40,922,200
S.C. Wholesaler Purchases	29,952,000	189,696,000	219,648,000
Unreported sales	(11,891,000)	(166,834,800)	(178,725,800)

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 21 12. Even assuming that all of the reported removals were included in King
 22 Mountain's sales to the South Carolina wholesaler, King Mountain underreported its
 23 cigarette removals by over 175 million cigarettes during that two month period.

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 25 13. Section 5701(b)(1) of the Internal Revenue Code imposes a tax on small
 26 cigarettes of \$50.33 per thousand cigarettes or \$0.05033 per cigarette. Small

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1 cigarettes are cigarettes weighing not more than three pounds per thousand. This
 2 small cigarette tax rate has been in effect since April 1, 2009.

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 4 14. At my direction, TAD calculated the amount of additional federal excise
 5 tax due on the cigarettes sold to the South Carolina wholesaler. Assuming King
 6 Mountain sold all of its reported May and June 2010 small cigarette removals to the
 7 South Carolina Wholesaler, the most favorable assumption for King Mountain, King
 8 Mountain underpaid its Federal excise tax liability for those periods by nearly \$9
 9 million. The following chart outlines the liability:
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	<u>May 2010</u>	<u>June 2010</u>	<u>Total</u>
Excise Tax Reported on King Mountain Returns (cigarettes)	\$909,010.13	\$1,150,604.19	\$2,059,614.32
Tax Due Based on Wholesaler Purchases (cigarettes)	\$1,507,484.16	\$9,547,399.68	\$11,054,883.84
Additional Tax Due	(\$598,474.03)	(\$8,396,795.49)	(\$8,995,269.52)

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 24 15. If the reported removals for May and June 2010 constituted sales to
 25 customers other than the South Carolina wholesaler, the least favorable assumption
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1 for King Mountain, then King Mountain would owe an additional \$11,054,883.84
2 (219,648,000 x \$0.0533) in Federal excise taxes.
3

4 16. Based on this analysis, TAD recommended that TTB's National
5 Revenue Center assess the additional tax due for May and June 2010, in accordance
6 with the assumption most favorable to King Mountain, as outlined in paragraph 14
7 above.
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9 17. In the course of preparing an early draft of this declaration earlier this
10 year, I noticed that the liability assessed for May and June 2010 in the Corrected
11 Notice & Demand of Taxes Due/Notice of Intent to Levy dated June 11, 2013
12 ("Corrected Notice") did not match the totals above. Our review had analyzed the
13 entire months of May and June 2010, but the Corrected Notice only offset King
14 Mountain's payments for the second half of each month against the additional
15 liability. Thus the liability assessed in the Corrected Notice was an amount between
16 the most favorable assumption in paragraph 14 and the least favorable assumption in
17 paragraph 15. Based on my review, the NRC prepared a Second Corrected Notice
18 that reduced the additional liability for those periods in accordance with TAD's
19 original recommendation.
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DECLARATION OF ALLEN LEFTWICH

1 In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that
2 the foregoing is true and correct.
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4 Executed on February 24, 2014.
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7 Allen Leftwich
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